IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9868 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRT CORPORATION

Versus

MAHEBUB D KATHIRI

Appearance:

1. Special Civil Application No. 9868 of 1992

MR PRANAV G DESAI for Petitioner

MR MUKESH H RATHOD for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/06/2004

ORAL JUDGEMENT

The petitioner has challenged the award made by the Presiding Officer, Rajkot dated 27th April, 1992 in Reference [L.C.R.] No. 489 of 1989. By the said award,

the petitioner is directed to reinstate the respondent on his original post without payment of backwages.

2. The facts as they appear from the record of this petition are, the respondent had been working as conductor for two years prior to the date of incident. He was, dismissed from the service on 27th January, 1989 on the ground that he had committed grave irregularity while discharging his duty. The allegation against him was that on the relevant date he had collected fare of Rs.6=00 from two passengers and had not issued tickets to them. On the relevant day, the bus was proceeding from Ankadia to Lunidhar and during the surprise checking, this default was found to have been committed by the respondent. His statement was sought to be recorded by the checking squad, but he refused to give it. In view of the aforesaid default, he was served with the chargesheet dated 22nd December, 1988. Inquiry was thereafter held and ultimately upon finding the guilt of the the respondent established, the disciplinary authority passed the order of termination of his service. The respondent raised dispute with regard to the order of termination of his service, which upon failure of conciliation proceedings was ultimately referred to the Labour Court for adjudication under Section 10 of the Industrial Disputes Act.

2.1. Before the Labour Court, both the parties led evidence. The say of the respondent was that before the bus was checked, it had gone to village Lunidhar. At Lunidhar, there was agitation going on and the bus of the respondent was the only means of transport that had gone there on that day. In view thereof, there was overcrowding in the bus and through mistake, this default was committed. The Labour Court after appreciating the material produced before it, came to the conclusion that the inquiry was held in accordance with the principles of natural justice. Further, that the respondeat had failed to issue tickets and it was also proved that the respondent had committed acts alleged against him. However, on the question of imposition of penalty, the Labour Court came to the conclusion that considering the default committed by the respondent, punishment imposed upon him was very harsh. While deciding this issue, the Labour Court had taken into consideration the past record of the respondent and especially the default card produced by the department. It, therefore, quashed and set aside the order of dismissal passed against the respondent and directed the petitioner to reinstate him on his original post, but in the facts and circumstances of the case, the Labour Court refused to grant backwages

to him. It is this award, which is now under challenge before this Court.

23/06/2004:

3. Mr. Manish Upadhyay, learned advocate appearing for Mr. Desai for the petitioner, has submitted that in the year 1992 the respondent was reinstated subject to the final outcome of this petition. It is further submitted by him that even after reinstatement, the respondent has committed about 27 defaults. He has relied on the decision of the Apex Court rendered in the case of Karnataka State Road Transport Corpn. v/s. B.S. Hullikatti reported in AIR 2001 S.C. p. 930. He has, therefore, prayed that the award be set aside and the order of dismissal passed by the Disciplinary Authority be confirmed.

4. The aforesaid submissions of Mr. Upadhyay cannot be accepted because the respondent has been reinstated in service in the year 1992. It appears that by way of punishment the Labour Court has not awarded any back wages. So far the subsequent defaults are concerned, the department itself had taken a lenient view. The petitioner could have resorted to some stricter measure and imposed some major punishment if the defaults were serious. However, that has not been done. Ofcourse, the petitioner has not placed on record the default card in respect of the respondent. In view thereof, so far this petition is concerned, there is no material on record to show the defaults committed by the respondent.

5. From the record of this petition, it appears that on the relevant date while the respondent was discharging his duty as conductor in a bus running between village Ankadia to Lunidhar, a surprise checking was made and it was found that respondent had not issue tickets to certain passengers, though fare of Rs.6=00 was collected from them. In view of this, he was chargesheeted. On going through the evidence produced before it and having gone through the respective evidence of the parties, the Labour Court has come to the conclusion that the guilt of the respondent has been established by the petitioner. However, on the question of punishment, it has thought it fit to interfere and disturb the same. In this petition, therefore, the issue is very narrow to the effect that whether the decision of the Labour Court on the question of quantum of punishment is proper. When the Labour Court has exercised its discretion after perusing the material produced before it and after hearing the learned advocate for the parties; and also having regard to the

past record of the respondent, the scope under Article 227 of the Constitution of India for determining the propriety of it becomes very narrow, when it has thought it fit to reduce the punishment imposed by the petitioner by denying backwages to him, instead of order of dismissal from service passed against the respondent. Since this discretion has been exercised on the material produced before it, the conclusion reached by the Labour Court cannot be termed as unreasonable and perverse. In that event this Court cannot interfere with the award of the Labour Court, especially when the respondent has been reinstated in service since the year 1992 at Una depot, as stated by Mr. M.H. Rathod learned advocate for the respondent. It is not necessary to interfere with the award passed by the Labour Court and disturb the same. This petition has, therefore, no merit and it deserves to be dismissed and it is hereby, ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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